CENTRE FOR EMPLOYMENT AND LABOUR RELATIONS LAW

February 2000

Working Paper No. 16

IMMIGRATION LAW AND POLICY, AND ITS CONTRIBUTION TO LABOUR MARKET REGULATION: A HISTORICAL SURVEY TO 1979

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ISSN 1321-9235
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IMMIGRATION LAW AND POLICY, AND ITS CONTRIBUTION TO LABOUR MARKET REGULATION: A HISTORICAL SURVEY TO 1979

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and
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1. Introduction

This paper presents a historical survey of the regulatory mechanisms whereby the Australian state governed the influx of immigrant labour and its deployment. Australia has traditionally been seen, along with Canada and the United States, as a country of permanent settlement, with an immigration program geared toward general population-building. This contrasts with those countries which have used guest worker schemes or other forms of temporary migration for more explicitly labour market ends. Yet it is clear that Australia’s immigration programs have had notable labour market purposes and outcomes. Since the end of convict transportation in the first half of the nineteenth century, immigration has been crucial to the development of Australia’s labour force. In the postwar period alone (up until 1981) immigration accounted for over half of the extra workers added to the labour force and today around a quarter of the labour force were born overseas, a high figure by OECD standards.1

In this paper we will argue that it is impossible to explain Australia’s immigration law and policy without reference to a prevailing system of labour market regulation. In exploring when and how migration law has been used as a tool of labour market regulation we wish to include regulation that impinged on the protection or alteration of work conditions; the recruitment and supply of certain types of labour; the disposition of labour; the development of particular industrial strategies; and the maintenance of full employment, the reduction of unemployment and the meeting of labour shortages.

The survey begins with a discussion of the nineteenth century background and the concerns surrounding the recruitment of Asian and Pacific Islander labour, concerns which would determine the nature of much Australian immigration law for the greater part of the following century. The bulk of our paper is then concerned with immigration regulation at the Commonwealth level. We take the survey up to 1979, at which point, with the introduction of a structured selection system and the establishment of three broad categories of entry (economic, family reunion, humanitarian), we can discern the broad outlines of our contemporary system of immigration regulation.

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1 Collins (1991); OECD (1999).
2. The Nineteenth Century Background

From the time of the European invasion, the development of the Australian colonies was predicated on immigration. Until the 1890s, immigrants outnumbered the locally-born: immigration accounted for 72 per cent of population growth from 1788 to 1852, 33 per cent in the period from 1860 to 1880 and 42 per cent in the decade to 1890. The nineteenth century struggles over immigration and Asian and Pacific Islander labour are crucial to understanding the immigration policies subsequently enforced in the first years of Federation.

For the first four decades of European settlement the convict assignment system ensured that labour was plentiful and cheap. While grants of land were made to independently wealthy settlers as well as to emancipated convicts, British and colonial administrations provided no financial assistance and little other encouragement to artisans or labourers wishing to migrate to eastern Australia. However, as the transportation of convicts wound down in the mainland eastern colonies during the 1830s, immigration began to be seen as the only way of ensuring a supply of labour. The free labour market which had developed with the decline of transportation was characterised by higher wages than those prevailing in Britain as workers, particularly skilled males, took advantage of periodic labour scarcity. The responses by colonial masters included importing indentured workers on wages below colonial rates and supporting flooding the market with free immigrants.

Due to the relative remoteness of the Australian colonies for British migrants, colonial and British governments played active roles in assisting immigration and facilitating indentured immigration. From 1831, funds for assisted passage of immigrants were raised from Crown land sales in the colonies and passage was generally offered to young, married, male agricultural workers and rural tradesmen, and their families, and to single female domestic and farm servants. Whereas each colonial administration formulated its own occupational, age and health criteria for selecting immigrants, the actual recruitment was superintended from London by an array of sub-agencies of the Colonial Office.

Sixty-three per cent of total ‘free’ (that is, not convict) arrivals between 1829 and 1860 were assisted. Indentured labour was useful in meeting specific labour shortfalls, but due to the fairly steady flow of assisted British migrants, these were relatively few. Indentured labour in the first half of the nineteenth century was limited to two short periods: the years just before and after the convict assignment system ended and transportation ceased in 1840, and the period toward the end of the 1840s when NSW was recovering from the depression of the mid-1840s but the stream of assisted British labour had not adequately recovered. Indentured immigrants in the nineteenth century included German stonemasons employed to build Victorian railways and Italian and Maltese migrants employed in the sugar industry, 1 200 Indians arriving between 1836

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3 Quinlan and Lever-Tracy (1990) 165.
6 Salter (1978) 16.
7 Willard (1967) 3.
and 1841 recruited by pastoralists, and 3000 Chinese arriving between 1848 and 1852 and working as shepherds and wharf labourers.

The reliance on immigrant labour gave a specific cast to early colonial labour regulation. Operating in an environment characterised by labour shortage and immigration, the colonial masters and servants statutes tended to be more extensive, more interventionist and more coercive than their British counterparts. Sectors of the workforce that fell outside of British statutes were included in the colonial laws, including domestic servants, dressmakers, laundresses and skilled rural labourers. The colonial acts also specified a wider range of offences and generally harsher penalties. There was a particular concern with the offence of absconding, as well as the failure of workers to ‘appear’ after receiving an advance or inducement from their employer to cover the costs of migration to the colonies. In an attempt to control absconding, New South Wales in 1845 introduced a compulsory discharge certificate system whereby servants had to receive a written discharge from their employer after completing their period of employment and present that discharge to any prospective employer before a new hiring could be made. A similar system was adopted by Victoria in 1851 and Tasmania in 1856. The concern that workers might fail to ‘appear’ after having their passage to Australia paid as part of an indenture, or that they would abscond to another job on arrival, was addressed by colonial masters and servants legislation containing specific provisions empowering the enforcement of contracts made outside of the colony. Widespread absconding during the gold rushes and general labour shortages led to further legislation passed in New South Wales in 1852 — and followed in Tasmania in 1854 and Victoria in 1855 — whereby repeated absconding by indentured workers was punishable by six months imprisonment, and employers engaging immigrant absconders were liable to fines per day of employment.

As the colonies achieved responsible government around the 1860s they took over recruitment policy and planning more directly, sending their own agents to Britain, and allocating funds for assisted passage through legislative enactment when it was deemed necessary. In any case, government assistance assumed less importance as nomination schemes took off, whereby established settlers would finance the passage of immigrants, usually nominating family members or friends. This meant, in effect, that in the second half of the nineteenth century colonial governments lost much of the control they had had over the composition of the immigrant intake under the earlier assisted passage schemes.

At the same time, however, the second half of the nineteenth century saw the enactment of specific immigration restrictions, directed principally at the Chinese. In 1855 Victoria enacted legislation limiting the number of Chinese that could be brought in on any ship to one for every ten tons, and imposed a poll tax of £10 on each arrival.
South Australia enacted similar legislation in 1857, and New South Wales in 1861. The legislation in all three colonies was subsequently repealed during the 1860s, but between 1877 and 1888 all Australian colonies enacted restrictive legislation directed at Chinese immigration.\(^\text{15}\)

It is clear that the restrictive legislation of the second half of the nineteenth century was racially motivated. British authorities were anxious to maintain the Australian colonies as bastions of European settlement.\(^\text{16}\) Yet as well as being a settlement issue, the question of racial homogeneity was also a labour force issue: the two became difficult to disentangle, as pointed out by Quinlan and Lever-Tracy:

In the second half of the nineteenth century it became increasingly axiomatic that ‘Asiatics’ were innately servile, would accept inferior wages and conditions, would not join unions and would willingly act as strikebreakers. Evidence in relation to this is in fact quite contradictory … On the one hand, perceptions that Asian labour was servile and would lower living standards — a view unwittingly fostered by employers who made public comparisons unfavourable to European workers — were ultimately self-fulfilling. On the other hand … [it was clear] that the language of racism was tactically useful to a still numerically small union movement in achieving its labour market restriction objectives.\(^\text{17}\)

In this context of racially discriminatory restrictions on labour supply, colonial governments were also interventionist with regard to labour control. For example, in Victoria, South Australia and Queensland, Chinese furniture makers were deemed a threat to local labour because of a belief that they paid subsistence wages and contravened legislation which regulated working conditions and hours. In Victoria, the relevant industrial regulation, the *Factories Act*, covered only those workrooms where six or more persons were engaged in work, and not including those places where those engaged in work were all members of the same family.\(^\text{18}\) In 1887, the Victorian government placed any establishment where one or more Chinese were engaged under the restrictions of the *Factories Act*\(^\text{19}\) and, later that same year, legislation prescribed that in any workroom or factory where any Chinese person was employed, no person could work before 7.30am or after 5pm on weekdays, nor after 2pm on Saturdays, nor at all on Sundays.\(^\text{20}\)

The seeming unanimity of opinion surrounding around restriction of Chinese immigration masks the complexity of contemporary concerns about imported labour and how immigration policies structured labour markets more generally. Non-European

\(^{\text{15}}\) Patmore (1991) 195; legislation denying the Chinese the right to vote, preventing them from being naturalised and keeping them off newly discovered goldfields was also enacted during this period.

\(^{\text{16}}\) Willard (1967) 4-5.

\(^{\text{17}}\) Quinlan and Lever-Tracy (1990) 167-8.

\(^{\text{18}}\) 48 Victoria No. 862

\(^{\text{19}}\) *The Factories and Shops Amendment Act 1887* (Vic) (51 Victoria No. 961).

\(^{\text{20}}\) 51 Victoria No. 1445. Similar legislation was enacted in Queensland and New South Wales in 1896. In the first decades of the twentieth century, Queensland also legislated to prohibit the employment of Asiatics in the construction of railways, in connection with trams and omnibuses and in the sugar industry: Huttenback (1976) 293.
imported labour tended to serve at least two purposes. First, non-white ‘specialists’ were useful to some colonies’ development, such as Afghan camel drivers in the arid interior and Malay and Japanese pearl divers on the northern coasts of Queensland and Western Australia; second, unskilled or semi-skilled labour worked in areas or occupations thought to be beyond European capabilities, such as plantation work or gang labour in the tropics. In fact, these labour requirements coincided with a general shortage of labour in the more remote colonies which, unlike south-east Australia, had not seen a population influx from gold rushes and were financially less able to sponsor large-scale assisted immigration from Europe.\textsuperscript{21}

The only large scale facilitation of imported indentured non-white labour occurred in Queensland, where over 62 000 Melanesian workers for the sugar industry were brought in between 1863 and 1904. This trade in workers was regulated by the \textit{Polynesian Labourers Act 1868} (Qld) and subsequent amendments, establishing three-year indentures with re-engagement or repatriation at the end of the contract, as well as licensing recruiting agents and providing inspectors to police the system. There was also a transfer system under the Act which allowed workers to be passed from one employer to another and employers could also ‘rent’ out their indentured labourers to tenant farmers for short periods.\textsuperscript{22} The basic motive of indentured or contract labour, then, was to move labour into specific areas of labour shortage, although it is important to remember that labour ‘shortages’ can exist even at high population densities.\textsuperscript{23} That is, certain types of production can be economically unviable if there is not the necessary labour supply at a sufficiently low wage rate. Such was the case with sugar production in the nineteenth century which depended on very large land units, or plantations, utilising gang labour.\textsuperscript{24} Falling commodity prices together with other cost factors eventually led to the demise of plantation production and the advent of farm-based cane cultivation with central milling.\textsuperscript{25} The subsequent drop in demand for large numbers of unskilled field workers undermined the \textit{raison d’être} of the labour trade.\textsuperscript{26}

Under the plantation system, Pacific Islanders were employed almost exclusively as field workers in cane cultivation and white workers and the trade union movement raised little objection to the labour trade. The shift to farm-based production coincided with a decrease in the number of first contract workers (newly introduced Melanesians made up only around 20 per cent of the workforce by 1898), and re-engaged Melanesian labour was able to command higher wages. At such wages, they were often engaged only for the peak period of the season, transforming Pacific Island labour, in practice, from indentured plantation workers (as originally intended) to \textit{de facto} high-wage short contract seasonal farm workers. For the unionised local white labour force,

\textsuperscript{21} Price (1974) 146.  
\textsuperscript{22} Graves (1986) 249.  
\textsuperscript{23} Engerman (1986) 266.  
\textsuperscript{24} \textit{Ibid.}  
\textsuperscript{25} Graves (1980) 41.  
\textsuperscript{26} Graves (1986) 257.
‘the immigrants were no longer the “generators” of employment but direct competitors ... for jobs, and potential strike breakers’.27

It can be seen, then, that the success of the indenture system depended on a certain industry structure creating specific labour ‘shortages’ (with plantation production being the paradigm of this, not just in Australia but worldwide by the second half of the nineteenth century) and the successful corralling of immigrant workers so that they represented no threat to local workers’ wages and conditions. In this sense, ‘decisions about Chinese and black labour migration were ipso facto decisions about white labour migration. While white migrants did indeed make individual choices in response to employment opportunities, they did so in a highly structured context’.28 In fact, our survey so far suggests a wider regime of regulation that consisted of three different streams: exclusion (of Chinese), corralling (of blacks, through indenture) and assistance (inducing whites to enter what was, as a result of the other streams of regulation, a protected high-wage labour market).

3. From Federation to the Second World War

In the following sections we outline the legislative and administrative means available for controlling the entry of immigrant labour, then go on to examine the contours of immigration policy more generally in the period before the Second World War, with special regard to labour market factors.

3.1 Immigration Control: The Legislative Framework 1901-1939

At Federation, the Commonwealth of Australia Constitution Act 1900 (UK) conferred on the new Federal government the power to legislate with respect to migration, naturalisation and aliens.29 This power was part of a wider federal settlement that saw the establishment of a protected labour market as one outcome of employer-union conflict during the 1890s depression.30 As we have seen, such ‘protection’ was intimately bound up with questions of race. While the labour movement was a key activist in the establishment of a racially protected labour market, Quinlan and Lever-Tracy note also that:

there was a far wider basis of activism and support for building a free but exclusively European society in Australia, which included the urban middle class and small farmers. In the end, those rural employers and others favourable to Asian and other non-European immigration lacked sufficient political influence and were seen as narrowly self-interested or misguided.31

The colonies’ concern with the racial constitution of the labour force was consolidated at a federal level with the Immigration Restriction Act 1901 (Cth) and the Pacific Island Labourers Act 1901 (Cth), but for the first two decades the control of assisted

29 Section 51 (xix) [naturalisation]; section (xxvii) [immigration and emigration].
immigration programs remained with the States, with the exception of labour imported under contract and governed by the *Contract Immigrants Act 1905* (Cth).

The *Immigration Restriction Act* set out grounds for the exclusion of immigrants, the granting of exemptions (usually for *bona fide* tourists and commercial travelers), powers of administration and a system of penalties for those assisting prohibited immigrants. Section 3 of the Act established seven classes of ‘prohibited immigrants’. Sub-sections 3(b) to 3(f) defined prohibited immigrants according to public interest criteria of health and good character. Sub-section 3(a), however, defined a prohibited immigrant much more broadly as any person who failed a dictation test in any European language of a passage of fifty words. Application of the test was carried out by collectors-of-customs at ports of entry, who had considerable discretion as to who was tested and in what language. However, those implementing the test did so guided by fairly clear instructions from the Department of External Affairs which was formally responsible for administering the Act. Although expressed in non-racial terms so as to avoid offending the non-European peoples of the British Empire and friendly foreign powers such as Japan, the test was clearly planned as a failsafe method of preventing the entry of non-Europeans into Australia, whether or not they came under any of the public interest exclusions listed in the Act. The ‘European language’ did not have to be one known to the immigrant and it was never intended that non-Europeans be given a chance to pass the test, nor that the test be administered to European immigrants.

Notably, the final class of prohibited immigrant under *Immigration Restriction Act* was:

> any persons under a contract or agreement to perform manual labour within the Commonwealth: Provided that this paragraph shall not apply to workmen exempted by the minister for special skill required in Australia or to persons under contract or agreement to serve as part of the crew of a vessel engaged in the coasting trade in Australian waters if the rates of wages specified therein are not lower than the rates ruling in the Commonwealth.

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32 See *Chia Gee v Martin* (1905) 3 CLR 649. In 1905 the provision was amended from ‘European’ to ‘any prescribed’ language, with a proviso that a ‘European language’ would be used until any further language was prescribed. The amendment was meant to reinforce the facially non-discriminatory nature of the Act, but parliament did not prescribe any further languages and so tests were always conducted in a European language: Palfreeman (1967) 82-3. The dictation test could also be administered to immigrants within a year of entry into Australia, or to non-British subjects on their release from prison for crimes of violence; those who failed were deemed prohibited immigrants and were liable to deportation: ss 5(2); 7-8. In 1920 the one year time limit was extended to three years after entry and in 1932 to five years after entry. The dictation test was used to a much greater extent as a tool for deportation than it was to prevent entry: Palfreeman (1967) 84.

33 The Act was administered by the Department of External Affairs until 1916; the Department of Home and Territories from 1916 to 1928; the Department of Home Affairs from 1928 to 1932; the Department of the Interior from 1932 to 1945; and the Department of Immigration from 1945 until the Act’s repeal in 1958.

34 The dictation test was modeled on that adopted in the colonies of New South Wales, Western Australia and Tasmania, which in turn was based on that used in the South African province of Natal. The formally non-discriminatory test was adopted in the Australian colonies after earlier colonial bills aimed to specifically restrict the immigration of ‘coloured races’ were refused royal assent: Willard (1967) 110-15.


36 *Immigration Restriction Act 1901* s 3(g).
At the same time, the *Pacific Island Labourers Act* prohibited the importation of Melanesian workers after 1904 and legislated for the deportation of most of those remaining by 1907.\(^{37}\) Pacific Island labourers were seen as unfree labour *par excellence*, brought in only under indenture and forced to re-engage at the end of contract or be repatriated, but the ground for exclusion in *Immigration Restriction Act*, however, was directed at contract and indentured labour more generally. Not racially based, the exclusion could be invoked against European and even British immigrants to protect local workers from foreign competition and from ‘unfree’ or bonded labour that was seen as inimical to the development of trade unionism.\(^{38}\)

The impetus for the restriction had come from the Labor Party as an amendment to the *Immigration Restriction Bill*; the government supported it with the addition of the ‘special skill’ requirement so that the needs of new industries could be met.\(^{39}\) Remarkably, in excluding even British subjects migrating under contract, ‘the policy posed a contradiction to British-Australian ethnic identity’.\(^{40}\) The issue was not seen in these terms at the time, partly because the system of overseas indenture carried, due to the late nineteenth century experience of Asian and Pacific Island labourers, an emotive and negative racial meaning. Those politicians who spoke in favor of the Labor amendment all cited examples of non-European indentured labour: Chinese, Japanese and Indian.\(^{41}\) Lenore Layman concludes, ‘it was this context which suggests that the consensus surrounding the prohibition of contract labour migration went only as far as a determination to prohibit indentured labour’, that is, non-European labour.\(^{42}\) However, given that non-European labour could already be prohibited under the dictation test, and Melanesian labour was covered by its own statute, Layman suggests the Labor Party itself may have had a specific protectionist motivation which it was less than forthcoming in clarifying. In particular Labor can be seen as responding to:

> the labour market concerns of craft workers on which labour’s parliamentary spokesmen were silent; yet whose organisation would, for the next half century, make most frequent use of the resulting contract labour regulations ... [I]t is reasonable to conclude that Labor’s silence on the need to protect craft conditions was at least in part deliberate. And it probably assisted the consensus in the 1901 parliament on the necessity to prohibit all contract labour migration.\(^{43}\)

Once the 1901 Act came into operation the labour market effects of section 3(g) were quickly apparent. In December 1902 six British felt hatters were detained on arrival at Sydney as prohibited immigrants because they were under contract to Sydney Hat

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\(^{37}\) The government issued tickets exempting 1654 Melanesians, but summarily deported 4629 others: Patmore (1991) 199. The legislation was upheld by the High Court in *Rohlfes v Brenan* (1906) 4 CLR 395.


\(^{41}\) *Ibid* 26-7.

\(^{42}\) *Ibid* 28.

\(^{43}\) *Ibid* 29. Layman points out the need to see s 3 restrictions as the outcome of political struggle, rather than simply labour interests codified into a monolithic regime of protection. Layman’s observation is confirmed if we look at later amendments to the 1901 Act: after 1925, exclusions were widened to be used specifically to keep out militant trade unionists during periods of industrial disturbance: see s 8AA(1) - (3).
Works and needed to demonstrate, under the Act, possession of special skill not available in Australia to meet demand. Barton allowed the hatters entry after finding insufficient labour available in Australia for the Hat Works to expand production, at the same time reiterating his opposition to contract labour migration. It was clear that section 3(g) - given labour movement vigilance and agitation - could be used to regulate contract labour migration and thus maintain full-time work and exclusivity of trade for craft unionists. Surveying similar cases in 1902 and 1904, Layman concludes: ‘Organised labour sought to prevent any importation of labour under contract. Whether this labour was British or not was secondary; what was primary was the state of the labour market.’ Inevitably this produced problems where the Commonwealth was perceived as treating British labour under contracts as pariah - that is, with the same suspicion it treated non-white labour - in what was a ‘British’ community.

Government embarrassment triggered a change in legislative regulation in 1905 when the Commonwealth enacted the Contract Immigrants Act. The new Act provided that any immigrant under contract was permitted entry provided the terms of the contract had been approved by the Minister for External Affairs or an authorised officer before the applicant’s arrival. To be acceptable, the contract had to meet three requirements: first, that it was not made with a view to affecting an industrial dispute; secondly, that wages and conditions matched those presently applying for Australian workers performing the same work; and thirdly that no labour of equal skill and ability was available in Australia.

To avoid the perceived offence given to Britons under the previous regime, the last requirement that no local worker of equivalent skill and ability be available did not apply to immigrants who were British subjects born in Britain or their descendants. Approximately 2,600 contract migrants entered Australia under the legislation, with 80 per cent of those entering between 1906 and 1938 being British. The new restrictions still seemed to protect the Australian labour standard against both strikebreaking and the driving down of award wages and conditions, but not explicitly against unemployment caused by excess supply of labour. In this way, the power of ethnicity and a perceived British racial unity ‘had reshaped the limits to protection of the Australian labour market’. The regulatory surveillance of contract labour migration was maintained, albeit in a less restrictive mode. The intensity of policing depended on organised labour’s activism - rather than routine bureaucratic scrutiny - and operated more rigorously under Labor governments than non-Labor governments.

By the time of the First World War, then, the existing legislative framework effectively barred non-European immigrants entry to Australia, and also European labour arriving under contract. As the existence of the dictation test became known, decreasing numbers of non-European immigrants tried to enter Australia. The Act also attempted to move the effective site of exclusion from entry ports to points of embarkation abroad by...

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46 Contract Immigrants Act 1905 (Cth) s 4(2)
47 Ibid s 5.
48 Ibid 36-8, 42. Layman also gives examples (45-6) of how the type of labour imported under the ‘skills and ability’ rubric helped management reshape workplace cultures; the significance of the labourers is therefore disproportionate to their numbers.
imposing penalties on ship masters and owners who landed prohibited immigrants without taking ‘all reasonable precautions’ to determine their eligibility under the Act.\(^{50}\) Between the wars this legislative regime was supplemented by a range of provisions allowing for more adequate control and screening of European immigrants who did not fall under the *Contract Immigrants Act* or the public interest exclusions of the *Immigration Restriction Act*. In effect, the period saw the categories of prohibited immigrant under s. 3 of the *Immigration Act* (the word ‘restriction’ was dropped in 1912) defined with increased specificity and the introduction of a series of new administrative practices.

In 1920, ‘prohibited immigrant’ was extended to include people who advocated the overthrow of governments by violence and, for a period of five years, any person ‘of German, Austro-German, Bulgarian or Hungarian patronage and nationality or [who] is a Turk of Ottoman race’.\(^{51}\) When, in 1924, unemployment rose amongst Italians, Greeks, Albanians and Yugoslavs who had arrived with little money and insufficient English to obtain jobs, the government prohibited the entry of any alien without a written guarantee from an Australian sponsor concerning jobs and accommodation.\(^{52}\) This was mandated by a new s 3(f) of the *Immigration Act*, prohibiting the entry of any person who in the opinion of an immigration officer was likely to become a charge upon the public by reason of infirmity or insufficiency to support himself.\(^{53}\) As well, the Australian government requested governments of origin not to issue passports to persons lacking the required money (£40) or who were not nominated by people resident in Australia, to discourage emigrants with inadequate English, and to limit new passports to an annual quota: 1200 each for Albanians, Greeks and Yugoslavs and 5000 for Italians.\(^{54}\) The 1924 amendments also introduced a visa system\(^{55}\).

Further amendments in 1925 granted the Governor-General wide power to set quotas by proclamation for aliens of any specified nationality, race, class or occupation where deemed desirable to do so on account of ‘economic, industrial or other conditions’ existing in Australia; or because such persons were ‘unsuitable for admission’; or because they are deemed unlikely to be readily assimilated within a reasonable time after their entry.\(^{56}\)

Importantly, the 1925 amendments also established grounds for deportation of immigrants involved in certain federal industrial disputes. A new section allowed that if the Governor-General proclaimed the existence of ‘a serious industrial disturbance … threatening the peace, order or good government of the Commonwealth’ then the Minister could deport any person not born in Australia who engaged in acts obstructing the transport of goods and passengers in relation to trade with other countries or amongst the States or the provision of services by any Commonwealth department.\(^{57}\) The provision seems specifically aimed at Australian Seamen’s Union officials Tom Walsh and Jack Johnson, who were Irish and Dutch respectively. The provision was

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\(^{50}\) *Immigration Restriction Act 1901*, s. 9. See Dutton (1998) 46

\(^{51}\) *Immigration Act 1901-1920* ss 3(gd) and 3(ge).

\(^{52}\) Price (1974) 182;

\(^{53}\) *Immigration Act 1924* (Cth).

\(^{54}\) Price (1963) 88-90.

\(^{55}\) *Immigration Act 1901-1924* s 3(gf)(iv).

\(^{56}\) *Immigration Act 1901-1925* s 3K (1).

\(^{57}\) *Immigration Act 1901-1925* s 8AA.
challenged in the High Court, but the Court found it a valid exercise of the immigration power under s 51(xxvii) of the Constitution.\(^{58}\)

The final administrative innovation between the wars was the introduction of the landing permit system. Under a 1932 amendment to the Act, a prohibited immigrant included any person who was unable to produce on demand a landing permit issued by the Department of Home and Territories.\(^{59}\) At the time, due to the economic crisis, the Commonwealth had a policy to restrict alien entry to those who would not compete in the already depressed labour market: the wives and children of those already settled and those who would bring in substantial capital and start up business on their own account. Within the existing legal framework, a person not eligible for admission under that policy had to be subject to the dictation test in some language unknown to him or her before being formally barred from entry, a situation the government considered ‘not altogether desirable, especially when the person tested is of the white European race and able to speak several languages’.\(^{60}\) In contrast, a system whereby an alien had to first obtain a permit to enter Australia afforded ‘the minister an opportunity to see whether authority might be safely given … The requirement of a permit to land is much simpler [than the dictation test] and quite reasonable’.\(^{61}\) The effect of the landing permit system was, according to David Dutton, to reduce the dictation test to a mere supplementary power: the permit system became the centrepiece of immigration control in the 1930s and the first workable system of offshore approval for immigrants.\(^{62}\)

3.2 Immigration Policy and the Labour Market to World War II

To a large extent, post-Federation immigration policy reinforced the racial and ethnic hierarchy established in the nineteenth century. Between the exclusion of non-whites on the one hand and the encouragement of Britons through assisted passage on the other, continental Europeans were tolerated to a greater or lesser extent if they were able to migrate on their own resources, with northern Europeans seen as less of a threat to racial homogeneity than southern Europeans. The United States, Canadian and New Zealand immigration policies displayed a similar ranking of priorities, embodied in statutory quotas. Australia avoided any such public quotas that would have rendered its policies transparent — partly because of the expense involved in setting up a Commonwealth immigration service in Europe to administer the quotas\(^{63}\) — but, as we have seen, relied on a variety of other instruments.

Most of the legislative instruments and provisions developed between the wars were directed at Europeans or ‘white aliens’. It was clear that the dictation test was intended to be applied only to non-European peoples. However, use of the test against Europeans was mooted in 1904 when Italian immigrants in Western Australia were thought to be displacing local labour and were believed to have been brought in under contract. The

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\(^{58}\) *Ex parte Walsh and Johnston*; *In re Yates* (1925) 37 CLR 36. The Court, however, found that the deportation provision was not authorised by any other Commonwealth power, and so could not be applied to persons who had ceased to be immigrants and had become members of the Australian community.

\(^{59}\) *Immigration Act 1901-1932* s 3(ge).

\(^{60}\) *Commonwealth Parliamentary Debates*, Senate, 29 April 1932, vol 134, 127.

\(^{61}\) Ibid 127.


\(^{63}\) Charteris (1968) 87
Minister for External Affairs, W M Hughes, instructed customs officers who suspected Italian immigrants were entering under contract but were unable to prove this to administer the dictation test in English. It is uncertain whether the test was ever actually administered, but the fact that the Minister had issued such instructions ‘highlights … the flexibility in the administration of the Act and the great discretionary power of the minister, who was subject only to parliamentary censure if his actions were thought either too lenient or too severe’.\textsuperscript{64} Similarly, in 1916 members of the Ironworkers’ Union in Lithgow refused to work with a recently arrived group of 97 Maltese who were suspected of entering under contract. Investigations by the Minister revealed no supporting evidence for the charge, but Hughes, now Prime Minister, thought the use of the dictation test justified to prevent the importation of any labour that violated the spirit of the \textit{Contract Immigrants Act}.\textsuperscript{65} The arrival of a further 214 Maltese at Fremantle fanned fears that imported labour was being used to take the jobs of conscripted soldiers and Hughes ordered that the immigrants be given the dictation test — in Dutch, which they all subsequently failed, hence becoming prohibited immigrants.\textsuperscript{66}

The Maltese were the largest single European group to be excluded under the dictation test in any single year.\textsuperscript{67} In the few instances when the test was subsequently applied to Europeans it was to \textit{individuals} ‘deemed undesirable for a particular reason’.\textsuperscript{68} Interestingly, though, the opposition to the Maltese had been couched largely in labour market terms: that they were contract labour or were displacing local labour. The subsequent amendments to the \textit{Immigration Act} introduced between the wars and discussed above were also largely about addressing these labour market concerns. Like those earlier legislative provisions regarding the importation of contract labour, they shift the focus of regulation from individuals to \textit{classes} of people who are defined, at least in part, by reference to labour market conditions. Indeed, part of the impetus behind the 1925 amendments was a 1924 Queensland Royal Commission into the Social and Economic Effect of Increase in Numbers of Aliens in North Queensland, also known as the Ferry Report.\textsuperscript{69} The ‘increase in aliens’ referred essentially to Italians, originally encouraged to immigrate to supplement the sugar industry labour force after the end of the Pacific Islander labour trade. By the 1920s, labour in the industry was in oversupply and the Report examined cases of newly arrived Italians working for below award wages and conditions, such as working a longer than eight hour day and foregoing wages in return for board and a cut from the first crop.\textsuperscript{70} One commentator in 1928 interpreted the 1925 amendments as ‘the immediate effect’ of the Ferry Report and hence a clear victory for organised labour.\textsuperscript{71}

\textsuperscript{64} Langfield (1991a) 6-7.
\textsuperscript{65} Ibid 9.
\textsuperscript{66} Ibid 10. Owing to the war, no means of repatriating them to Malta could be found so they were deported to New Caledonia, being brought back to Australia three months later where all but six were allowed to land on the condition they became members of trade unions.
\textsuperscript{67} York (1992) 4.
\textsuperscript{68} Elkin (1945) 17-18; for the most celebrated instance, see \textit{R v Wilson; Ex parte Kisch} (1934) 52 CLR 234.
\textsuperscript{70} Borrie (1954) 110. Again, these labour market objections to Italians’ ‘persistence and industry’ were supplemented by prejudice against southern Italians in favour of northern Italians, and an untested belief that southern Italians were dominant in north Queensland.
\textsuperscript{71} Phillips and Wood (1968) 38.
While the 1925 amendments can be seen as an attempt to tackle the problems of labour oversupply and, indirectly, the flouting of the award system, the new powers were rarely if ever invoked. Instead, bilateral arrangements with source countries instituted a de facto quota system to achieve the same ends. Yet at the same time, such quotas appear relatively generous given migration trends at the time. Italian immigration — and that of adult males from southern Europe generally — actually increased after 1924. Yet even with this increase, intakes remained well below quota levels. 72 (Also, the levels may not have been strictly enforced in practice, with British and Australian officials offsetting surpluses in one period with deficiencies in another 73). The Labor Party took this as an indication that quota levels were too high and on taking office in 1929 halved the levels and in 1930 prohibited the entry of all southern Europeans except close relatives of those already resident in Australia or those with financial resources of their own. Thus, with the quota system effectively abandoned, the landing money requirement became a significant policy instrument to control inflows: the Lyons government set the level of required resources at £500 in 1934 and in 1936, with an improvement in economic conditions, lowered this to £200, while allowing Australian residents to sponsor any adult worker who had £50 and who intended to enter occupations where vacancies existed. 74

The variations in the quota and in the guarantee and landing money requirements seem to be reflected in the numbers of immigrants. For example, numbers fell rapidly after the 1928-29 quota reductions and rose again in 1937-39. Yet the policy instruments may not have been the principal influence. The fact that the 1929-30 fall in immigrants went far below the newly reduced quota levels indicates instead that the restrictions were following migration trends already determined by other forces 75. Those forces included the depression, which made Australia an unattractive destination for migrants in any case, shown by the fact that in 1929-30 far more European migrants were leaving Australia than arriving. 76

Again, it is important to see the attempted restriction of aliens as the obverse of the active selection and recruitment of British labour. Between 1901 and 1930, Australia’s population grew from 3.8 million to 6.5 million, with net immigration responsible for about 30 per cent of this expansion. 77 The age structure of the immigrant intake meant that the migrants contributed more to labour force and employment growth than is suggested by the aggregate figure: from 1901 to the First World War, British migrant workers accounted for 34 per cent of the rise in Australian employment and between 1921 and 1927, 40 per cent. 78 That is, despite restrictive legislation directed at Asians and, at various times, continental Europeans, the supply of labour in aggregate was not especially restricted.

Around one-half of arrivals in Australia over this period were assisted by governments. 79 After the high unemployment of the late nineteenth century, assisted

73 Ibid 91.
74 Ibid 91-92.
75 Ibid 92.
76 Ibid 93.
77 Pope (1987) 42.
78 Ibid 45.
79 Pope (1981) 39. Roe (1990), at 103, points out that bureaucrats and commentators, and hence
passage was revived by NSW and Victoria in 1906 and 1907 respectively, and ranged from loans to payment of the full ocean fare. On average, the assisted fare was about one-third to one-half lower than the full third-class fare.\textsuperscript{80} In 1920, the Commonwealth government took control of immigration policy, publicity, selection and shipping — setting up the Migration and Settlement Office at Australia House in London — while the States continued to determine their particular intakes. The Commonwealth government of Billy Hughes was also instrumental in securing passage of the \textit{Empire Settlement Act 1922} (UK), under which the British government was prepared to share the costs of passage of emigrants from the United Kingdom with Dominion governments. Australia’s agreement with Britain pursuant to the Act was an ambitious scheme containing interlocking elements of migration and national development. The Commonwealth government was concerned to link immigration with closer rural settlement and negotiated for the British government to share interest payments on loans to meet the establishment costs of farms for immigrant settlers.

Passage assistance was a useful and flexible policy instrument. For example, assistance tended to broadly correlate with fluctuations in labour demand and with cycles of domestic employment and unemployment.\textsuperscript{81} In this sense passage assistance, observed the National Population Inquiry in 1975, was essentially a tap: ‘turned on in boom and shut off in recession’, and thus an ‘effective instrument of policy control to bring immigration flows into balance with assessed national need’.\textsuperscript{82} However, ‘assessed national need’ appears a fairly vague concept. Whereas Hughes and other Protestant-Empire groups saw national need as linked to intense rural settlement and the yeoman ideal, majority Labor Party opinion tended to combine a scepticism toward Empire with a drive to foster urban-based manufacturing and industrial development, chiefly through tariff protection. This meant, in practice, that immigration schemes that were explicitly linked to land settlement tended to prevail: they accorded with the views of those who saw primary industry as the key to national development, while Labor tended to support such schemes on the grounds that they would not create labour market competition for domestic urban workers.\textsuperscript{83}

The States tended to be dominated by Labor administrations, and Victoria and NSW were also relatively land scarce and industrialised. The passage assistance schemes of the 1920s allowed these States some control over the type of immigrant. Those entering under assistance schemes were restricted to two categories: the nominated and the selected. The former category included friends and relatives of those already resident in Australia for whom the nominator took responsibility for post-arrival accommodation and employment, as well as individual and block nominations by employers or by church and philanthropic groups. The latter category were those workers requisitioned in specific numbers by State governments. State Labor governments remained unenthusiastic about the selection scheme, especially as local unemployment increased, and tended to confine requisitions to female domestics and male land workers, both adult and juvenile, including those for closer settlement farm schemes.\textsuperscript{84} Because of the historians, gave little attention to the non-assisted immigrant and presumes that most must have been relatively affluent and skilled and so considered desirable by most Australians’ criteria.

\textsuperscript{80} Pope (1981) 39.
\textsuperscript{81} Withers and Pope (1985) 554.
\textsuperscript{82} National Population Inquiry (1975), vol. 1, 93-4; 119.
\textsuperscript{83} See the discussion in Roe (1990).
\textsuperscript{84} Roe (1990) 103.
limited use of the selection system, in the second half of the 1920s the nomination system accounted for two-thirds of those assisted. The nomination system could be geared, as it was in NSW, to introduce those ‘classes and those alone who can be readily assimilated in the industrial life’, but as the labour market tightened, the nomination scheme basically became one of family chain migration, as State governments were reluctant to approve employer nominations.

Although the schemes entailed some general commitment to work within a given sector or the guarantee of employment in that sector, assisted passage schemes — at least as practiced in this period — could not in themselves bind immigrants to particular occupations on arrival. Thus even when assistance was made conditional on immigrants being willing to undertake specific tasks, it was open to immigrants to register as, say, farm workers or domestics to gain assistance, but to take up different work on arrival. That is, there was no contractual means of long-term enforcement. An exception were the boy farm workers who in some States worked under a form of indentured apprenticeship for three years, with their wages managed by the government and a portion used to repay fare loans. Overall, despite an emphasis on closer rural settlement, the majority of subsidised male British immigrants in the first three decades after Federation were skilled and semi-skilled workers in fields other than agriculture, reflecting the dominant role of industrialised states Victoria and NSW in attracting most of the immigrant inflow in this period.

Even the Commonwealth government remained more cautious and restrictive concerning British immigration than Britain had hoped. It resisted pressure to expand passage assistance beyond the nominated and selected categories or to channel funding into grants to shipping companies which would have led to reduced fares and so enabled mass self-paid migration, free from effective Australian regulation. As the economic crisis worsened at the end of the 1920s, the Commonwealth government increased its direct control over the assisted immigration scheme by insisting that all nominations and requisitions be submitted to the federal authorities for prior approval. The Development and Migration Commission, which the Commonwealth government had established in 1926 to both supervise assisted immigration and approve loans for national growth more generally, was abolished in 1930. Responsibility for passage assistance eventually passed to the Department of the Interior, combining for the first time the administration of both immigration restriction and assistance.

87 Roe (1990) 103.
88 See, eg, the Juvenile Migrants Apprenticeship Act 1923 (NSW), modeled on an earlier South Australian statute. Labor politicians in NSW opposed the system put in place by the statute, referring to it as ‘child slavery … brought on for the purpose of breaking down the conditions and the pay awarded by the Federal Court’: NSW Parliamentary Debates, Legislative Assembly, 18 December 1923. When Labor took office in 1925 it substantially repealed the statute. Female juvenile domestics were not brought under a similar system, despite the fact that high demand gave them greater scope for moving from job to job; instead, marriage could release them from the obligation to work, indicating the ‘family building role of the girls … in migrationist thinking and propaganda’: Roe (1995) 229. For an overview of the experience of assisted British immigrants, see Roe (1995) ch. 10.
89 Pope (1981) 42-44.
90 Roe (1990) 105-6.
91 Salter (1978) 22.
4. The Postwar Decades

4.1 Wartime Policy Formation

The Second World War was a watershed in terms of both the principles that guided immigration policy and the administrative framework in which it was implemented. The postwar migration program clearly displayed continuities with prewar policy. First, the experience of the Asia-Pacific war only confirmed the enthusiasm for national development through population growth and settlement that had driven earlier policies such as those sponsored under the *Empire Settlement Act*. Secondly, the dominant policy instrument used to achieve this remained assisted passage. Third, the restrictive policy toward non-white immigration remained untouched. Nevertheless, we can also identify several aspects whereby the postwar program represented a significant break. First was the scale of the program, which exceeded in number the optimistic programs of the early 1920s and, in setting a target, guaranteed the stability and continuity of such massive intake. Secondly, although the ‘white Australia’ policy was maintained, the increasing diversity of source countries through the 1940s, 1950s and 1960s represented a shift from the predominantly British immigration of the prewar period. Third, there was the abandonment of closer rural settlement as a policy focus, and a greater emphasis on urban settlement and hence the provisioning of industrial labour markets. Dealing with urban industrial markets in turn meant bringing in a cross-section of occupations, making it more complex than previous indenture systems that attempted to provision single sectors only.92

In August 1945 the then Minister for Immigration Arthur Calwell announced a planned increase in population of two per cent per year, half of which would be made up through immigration. This annual figure of 70,000 immigrants stands in stark contrast to the average intake of 18,700 per annum in the period 1901 to 1930 and the low 3,224 average yearly intake from 1931 to 1940.93 Despite the renewal of a British Free and Assisted Passage Agreement in 1946, the United Kingdom, in light of its own post-War labour shortages, was unable to provide the bulk of the target, and in the following twenty-five years assisted passage agreements would be made with a host of continental European countries and with refugee bodies.

A number of factors drove this shift in policy, including the need to increase population for defense and strategic reasons, humanitarian concerns for wartime refugees, and the desire to provide an increased labour force, either for future national development or to meet existing labour shortages. Andrew Markus argues that the debate on immigration makes most sense in the context of a more general post-Depression concern with fertility and the national birthrate that preceded the onset of the Asia-Pacific war in 1941. The impact of the war no doubt heightened the strategic imperative to increase white population and thus ward off ‘Asiatic’ infiltration, yet more explicit labour market concerns also guided policy debate. A National Health and Medical Research

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92 See generally Borrie (1949) ch 3; Zubrzycki (1995); Markus (1984a). Dutton (1998), at 61-2, argues that the second and third of the postwar developments — the shift away from both British migration and rural settlement — were evident in the 1930s, although the economic crisis and the Second World War prevented any large scale commitment of resources to new programs.
Council Inquiry, reporting in 1944, predicted that the falling birthrate of the 1930s would result in substantial deficits in the entries to the labour force at a time - the years 1947-1961 - when there would be a high demand for labour to overcome lags in capital stock and revive the flow of consumer goods following the war.\(^94\)

Postwar reconstruction exacerbated concerns about labour force deficits, despite the challenge of demobilising and re-employing all those involved in the war effort, due to an anticipated stimulus created by a backlog of demand. Coal and steel production had run down due to supply shortages; the anticipated rise in marriages and the birthrate after the war would increase household formation and raise the demand for capital goods and housing.\(^95\) Professor Giblin estimated that postwar labour demand would result in the ‘very real possibility of our being short of labour’ despite the reabsorption of demobilised personnel.\(^96\) Of course, many of those demobilised did not seek re-employment (due to disability or admission to training schemes) and many replaced women and older men who stopped employment at the end of the war, but, the backlog of demand for labour remained substantial: between June 1945 and June 1947, civilian employment increased by 451 700, or 17 per cent, without any significant increase in the unemployment rate.\(^97\)

At the same time as postwar reconstruction planners were considering population estimates, the United Kingdom approached Australia about resuming an Empire settlement program after the war, with the British agreeing to meet the cost of assistance. A 1943 Interdepartmental Committee on Migration Policy prepared information on the absorptive capacities of domestic secondary industry and the machinery to be established in London to administer the scheme. The result was an assisted passage agreement announced in March 1946 which gave free passage to British ex-service personnel and their dependants and required all other approved applicants to contribute no more than £10 sterling for their passage.\(^98\) As we have indicated, an interdepartmental committee on white alien immigration accepted the need for such immigration, and so the broad thrust of postwar policy was in place by 1944, although which European countries would supply the bulk of alien immigration could only be decided at war’s end.

A Commonwealth Department of Immigration was created in July 1945 and a ministerial statement in August set the two per cent population growth target as the country’s ‘maximum effective population absorption capacity’. Rather than a strict numerical quota, then, the annual intake target was to be set according to national needs and absorptive capacity and kept constantly under review.\(^99\)

The task of assessing labour force needs and absorptive capacity was made easier by the administrative machinery established by the war economy. In 1941 the government established a Manpower Directorate, set within the Department of Labour and National Service, to co-ordinate the distribution of labour between industries and the armed

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94 National Population Inquiry (1975) 100.
95 Smith (1979) 37, 38.
96 Cited in Walker (1947) 332.
97 Butlin and Schedvin (1977) 701.
98 Ibid 703.
services. By 1943 the Directorate also took on responsibility for assisting discharged servicemen in finding suitable, long-term employment. In 1945 the *Re-establishment and Employment Act (Cth)* formalised this arrangement by setting up the Commonwealth Employment Service (‘CES’). The Commonwealth’s responsibility for re-establishing ex-service personnel and war workers justified this move into an area that, until then, had been the prerogative of State labour exchanges.\textsuperscript{100} The new CES would now provide labour market information direct to the Commonwealth government. Similarly, a new Commonwealth-State agreement negotiated at the 1946 Premiers’ Conference transferred responsibility for the employment of assisted migrants to the Commonwealth. In that same year a detailed estimation of the capacity of all industries and of individual occupations within each industry had been undertaken by all States and the subsequent estimation of manpower requirements was presented to Commonwealth and State ministers to aid their migration planning.\textsuperscript{101}

The 1946 survey concluded that Australia could absorb 46 600 immigrant workers, which meant 120 000 men, women and children when dependants were taken into account.\textsuperscript{102} Thus the immediate task was not one of finding employment for immigrants, but of securing the required number of immigrants. Following the British Free and Assisted Passage Agreement of 1946, agreements were reached with Malta, Eire and the International Refugee Organisation (‘IRO’) and were in place by 1948; with Netherlands and Italy in 1951; and West Germany in 1952. A General Assisted Passage Scheme for people from the United States, Switzerland, Denmark, Norway, Sweden and Finland was established in 1954. What distinguished the agreements with the IRO, Netherlands, Italy and West Germany was the requirement that immigrants remain in Commonwealth-approved employment for two years. It is that requirement that we examine in the next section.

### 4.2 Migrant Labour Under ‘Contract’: The Displaced Persons Scheme

In 1947 labour shortages had been identified in nursing, coal mining, timber getting, steel production, building material production and textiles, and there was a difficulty in recruiting workers for infrastructure projects such as the Tasmanian hydro-electric scheme, the Kalgoorlie pipeline and the Trans-Australian and Central Australian railways: this at a time when demobilisation had been substantially completed and most full time labour resources had been tapped.\textsuperscript{103} By November 1945 it had already become clear that British applicants would not provide adequate numbers to reach the new targets, and that Nordic and French migrants - the preferred of the continental Europeans - would not be forthcoming.\textsuperscript{104} In contrast, the IRO encouraged Australia to select ‘displaced persons’ (‘DPs’: 8 million non-Germans brought to Germany as slave labour during the war, many of whom did not wish to be repatriated to their home countries which had come under Soviet influence) from its refugee camps for resettlement in Australia. Given that the IRO itself offered to provide the necessary shipping, this presented the best alternative and Australia agreed to a rate of 12 000 DPs per year, and instituted a selection policy with emphasis given to their ‘ages and

\textsuperscript{100} Walker (1947) 364.
\textsuperscript{102} Borrie (1949) 25
\textsuperscript{103} Markus (1984b) 74.
\textsuperscript{104} *Ibid* 75-9.
proficiency in those skilled occupations where there is a marked shortage of labour’.105

In July 1947 the then Minister for Immigration, Arthur Calwell, sent officers to make preliminary selection in European DP camps ‘of those classes of workers who can best assist our manpower shortages. We would select types specially suitable for rural work, nursing and domestic work in hospitals, labour for our reconstruction programme and developmental projects. Selection will be on general suitability for work performed ...’.106 He added, in a later ministerial statement, that ‘the Commonwealth Employment Service has undertaken to co-operate in placing European migrants in employment. Since they will have been selected with a view to meeting our known labour requirements, there will be no difficulty in securing suitable employment with a minimum delay for all the displaced persons who are brought here’.

The DPs were required, as a precondition of their settlement, to remain two years in employment selected by the Australian government according to perceived labour shortages. The scheme has been referred to as labour under contract, but needs to be distinguished from the contract labour schemes of those other countries — United States, Canada, Argentina, Belgium, UK — where an immigrant knew in advance of the company that would employ him or her as well as the type of work and renumeration involved. Consisting instead of a unilateral undertaking on the part of DPs, the Australian scheme was not really a contract at all, although IRO staff, Australian officials and DPs themselves referred to it as such.108 The undertaking took the following form:

Undertaking:

I hereby certify that the personal particulars supplied by me to the Australian Selection Officers are true in every respect and that I have made myself familiar with the conditions under which displaced persons can emigrate to Australia. I fully understand that I must remain in the employment found for me for a period of up to two years and that I shall not be permitted to change that employment during that period without the consent of the Department of Immigration.

Full name:
Signature:
Date:109

108 Ibid 40.
109 Ibid 40.
In return for signing the undertaking, DPs were admitted to the country on two-year Certificates of Exemption under the Immigration Act, with the landing permit specifying two years residence only. The Immigration Department made it known that permanent residence would not be granted automatically, and that the issuing of the Certificate of Authority to Remain in Australia was conditional upon successful fulfilment of the two year ‘contract’. In form, at least, this made the DP scheme a species of temporary labour migration, with restrictions on employment and mobility akin to western European ‘guest worker’ schemes, although in practice the expiration of temporary residence permits was rarely followed by deportation.110

Yet it would be reasonable to conclude that the threat of deportation made possible by the undertaking provided the government with an effective tool of labour market control over the migrant workers; as did the threat of being assigned a worse job if the migrant objected to working conditions.111 The undertaking also had other economic, administrative and political advantages for the Commonwealth government. Economically, it enabled an intake of labour to increase supply in a time of shortage but, by directing the labour to remote areas and utilising existing wartime accommodation, it did not exacerbate pent-up demand. Administratively, it obviated the need for detailed matching of applicants to vacancies with regard to individual skills, and immigrant labour could easily be channelled toward essential industries, especially development projects in remote locations. In fact, one of the most common criticisms of this stage of Australia’s immigration program was the poor utilization of immigrants’ professional training, qualifications and experience. The recognition and utilisation of overseas training and qualifications has become a leitmotif of subsequent discussion of the labour market implications of immigration.112

The overriding concerns that shaped the DP program can be seen in the guidelines developed by the Department of Labour and National Service, codified in 1948:

- DPs were not be placed so as to deprive Australians of accommodation;
- DPs were only to be placed where there is accommodation available;
- DPs were not be placed in employment for which suitable Australian workers are available or under circumstances leading to the displacement of Australian workers;
- DPs were only to be placed where they receive award rates of pay.113

A 1949 memo further specified that in case of redundancy DPs were to be first to be dismissed, irrespective of length of time on the job.114

By the middle of 1951, 166 330 refugees had entered Australia under the DP scheme, 57.4 per cent of whom were breadwinners and unencumbered women who worked

111 Markus (1984b) 88.
112 Kunz (1988) 49
113 Kunz (1988) 142
114 Markus (1984b) 88.
under ‘contract’. At that time, twenty per cent had fulfilled their obligations, and of those remaining, 8,000 worked in railway construction and maintenance, 6,000 in public utilities, 5,000 as metal workers and 19,000 in the building industry. In 1950, DPs constituted 25 per cent of the workforce in Australian iron and steel works, 30 per cent of the workforce in cement works and ten per cent in the timber industry. In Victoria, women DPs provided 35 per cent of domestic workers and nursing assistants in mental institutions. It appears that DPs successfully filled the most extreme postwar labour shortages, especially those unskilled jobs unpopular with the Australian-born.115

The use of directed labour presented its own problems, however, including press sympathy for those educated refugees forced to do unskilled labour and the coverage given to the policing of the ‘contract’ through deportations. The threat of deportation especially misfired when some dissatisfied migrants began to demand deportation as a means of escaping the contract and returning cheaply to Europe. As a result, CES officers were, by 1949, prohibited from threatening refugees with deportation.116 In 1951 the Minister, Harold Holt, announced that absconders from the contract numbered two per cent, although by this time CES officers were largely approving transfers in employment that had been arranged by the migrants themselves, so as to avoid confrontation. Yet the death-knell for the directed labour schemes came with the 1952 recession which saw the national male unemployment rate climb from 1.5 per cent in 1950-51 to 3.9 per cent in 1952-53.117 Italian immigrants who arrived in early 1952 as unemployment rates reached their peak found themselves unemployed and demanded the government meets its part of the ‘contract’ and secure work for them. Police were called in to quell protests instigated by unemployed Italians at Bonegilla and Maribyrnong Migrant Hostels and at the Italian Consulate in Sydney. However, Minister Holt denied there was any legal obligation on the part of the federal government to provide work, the undertaking being binding on the immigrant alone ‘in consideration of the passage money or a large proportion of it’. It was, observes one historian, a ‘fatuous’ interpretation, ‘because both Calwell and Holt had frequently justified the contract by pointing out that it safeguarded the immigrant against unemployment’. The repudiation of any obligation on the part of the government signaled the ‘moral collapse’ of the contract and it fell into disuse.118 In any case, increasing numbers of aliens were already arriving in Australia outside of the assisted passage schemes: by 1951, 32 per cent of the alien intake was assisted whereas 68 per cent were full-fare paying and could not be directed into work.119

Whatever the political disingenuousness of Holt’s characterisation of the nature of the undertaking, it does sum up the classic justification for indentured or bonded labour schemes, where the indenture contract is viewed as the voluntary exchange of the migrant’s labour time in return for the transport costs of migration and, perhaps, for training and learning of labour discipline. How then does the DP scheme compare with other bonded labour schemes as a form of legal regulation? Indenture schemes can be situated along a continuum of labour movement, from free, self-financed migration to

116 Ibid 177.
117 Salter (1978) 45.
Indentured or bonded labour is a mixture of freedom and coercion: the contract is seen as free or voluntary (although, as in the case of the Pacific Islander trade, allegations of kidnapping and fraud were common) but on arrival the migrant does not represent ‘free’ labour until his or her obligations under the contract — working at a specified job for a specified time — are discharged. Engerman goes on to distinguish two contexts in which bonded labour schemes typically operate. The first is in times of general labour shortage or low population density where the ultimate goal is to increase settlement, a typical case being that of British domestic servants brought to colonial North America who were expected to remain as settlers after expiration of their contract. The second is where there is a specific labour shortage for a certain type of work, seen already in our examination of the Pacific Islander trade, but also common in Fiji, Natal and the West Indies where there was plantation-based export production. Here the indenture process is overlaid with racial ideologies about work in tropical climates and generally arose on collapse of the slave trade. The Australian DP scheme combined elements of the two. The DPs were brought to Australia to fill specific areas of labour shortage and legally they had no guarantee that they would become permanent settlers on expiration of their contract. In practice, however, we have seen that the government expected them to become permanent settlers and saw the scheme in the context of a general postwar population-building exercise to overcome more general labour shortages. Specifically, an important feature of the scheme was that the heads of families who were recruited were permitted to take with them immediate families and dependents and those travelling alone were able to nominate families for admission after three months residence in Australia, making it ‘essentially a family migration scheme’. Or, in the words of the Minister introducing the 1953 program, it was designed ‘not on a man-power and unmarried individual worker basis but on a true population-building aspect of introducing families that will contribute to the long-term development of Australia’.

European ‘guest worker’ schemes that seem to follow the second model of bonded labour also, in practice, have tended toward a permanent settlement model as work permits were renewed and restrictions on job mobility were progressively eased during the 1960s and the early 1970s. Conversely, the high rate of return after ten years of settlement for Australian immigrants in the 1960s and early 1970s (nearly 40 per cent for Dutch and German settlers) suggest that despite government policy and the stated intentions of immigrants on arrival, Australia has in practice been treated as a country of temporary labour migration by many immigrants. This suggests a convergence of regulatory schemes despite the common dichotomy of ‘guest worker’ versus ‘permanent settlement’: the difference can be seen to be more one of degree than kind.

4.3 Assisted Immigrant Labour and the Long Boom

The 1951-52 recession saw a sizeable reduction in the immigrant intake, from 150 000 to 80 000. Half of the intake would come from Britain; of the remainder, half would enter under new schemes established with European countries and half as landing...
permit holders. Although intake would increase again after 1954,\textsuperscript{124} the pattern set in 1952 would characterise the immigration program for much of the postwar period, with most immigrants entering under one of three categories: either British assisted passage schemes, European bilateral agreements, or — in the case of relatives of non-British breadwinners — the landing permit system.

This last group, largely wives and children of European immigrants already in Australia, was not restricted. They received no passage assistance from the Australian government but were required to be nominated by relatives or friends in Australia who undertook to provide accommodation (that is, suitable housing meeting certain criteria of size and quality) and to be responsible for their maintenance for twelve months after arrival. Few landing permit holders competed for jobs in the Australian labour market, either because of their family composition, or because their nominators had employment arranged for them.

The first two categories, however, tended to target skilled and semi-skilled workers who were in short supply in Australian industry, and rural workers, and operated either through group nominations by organisations which provided accommodation and employment for persons selected pursuant to their requisitions, or through Commonwealth nominations whereby nominees were accommodated in government hostels and allocated to employment by the Commonwealth government.\textsuperscript{125} After the end of the DP scheme, Commonwealth nominations made up a decreasing proportion of all assisted immigrants. The value of Commonwealth nominations was that they gave the government considerable control over the immigrant intake: they were generally restricted to people under 45 years of age possessing an occupation in immediate demand. The number of applicants for Commonwealth nomination generally exceeded the number desired by the government and the excess were placed on a reserve list according to occupation. When Australian employers required immigrant workers with particular skills they forwarded group nominations via their State governments and the requests were matched with those applicants on the reserve list who possessed the necessary skills.\textsuperscript{126}

\textsuperscript{124} Calwell's target of a one per cent annual addition to the population remained a long-term objective of immigration policy throughout the 1950s and 1960s, but was only met between 1948/49 and 1951/52, and in 1954/55, 1955/56 and 1968/69. Otherwise, between 1952/53 and 1975/76 immigration contributed on average 31 per cent less than the planned one per cent. High population growth made a proportional target such as one per cent progressively more difficult to achieve, while substantial outflows of settlers and residents eroded the population gain sought from immigration. While settler arrivals intermittently reached the target (even exceeding it several times in the early 1970s), net permanent and long-term arrivals never achieved the annual target. By 1968, the Immigration Planning Council suggested 0.8 per cent as a more realistic target. Actual arrivals corresponded more closely with planned arrivals as targets were defined more exactly and the departure of former settlers was recognised: see Smith (1979) 44-46.

\textsuperscript{125} For Britons, unlike Europeans, passage assistance was extended to personal nominees where the nominator guaranteed suitable accommodation on arrival. Full-fare paying Britons, subject to health and character criteria, were permitted to enter Australia freely without the need for any nomination, being regarded as people of means unlikely to compete for unskilled jobs.

\textsuperscript{126} See Commonwealth Parliamentary Debates, House of Representatives, 7 August 1952, vol 218, 131-134; Appleyard (1964) 87-89. The Contract Immigrants Act 1905, which required any industrial group nominations involving work contracts to be submitted to the Minister for approval, proved too unwieldy an arrangement to allow the massive influx of labour which the government favoured in the postwar period. In 1948 the Secretary of the Department of
The new schemes of non-British immigration were instigated to replace the DP scheme. Under bilateral agreements with the Netherlands, Italy, West Germany and Malta, migrants were no longer directed into employment. However, as the system outlined above indicates, and in contrast with the DP scheme, immigrant workers under the new agreements were largely selected on the basis of known existing employment vacancies. Administration of the program entailed close co-operation between the Departments of Labour and Immigration. The Minister for Immigration was also assisted by two advisory bodies: the Immigration Advisory Council (‘IAC’), established in 1947, and the Immigration Planning Council (‘IPC’), established in 1949, each comprising representatives of capital and labour as well as other community leaders. The IAC’s role was to monitor the sociological effects of immigration, with particular reference to methods of facilitating assimilation of immigrants into the community, whereas the IPC had a more strictly economic focus, planning and reviewing progress in recruiting and absorbing immigrants into industry and development projects and examining any difficulties regarding the employment of immigrants. Both committees were serviced by staff of the Department of Immigration.127

Part of the rationale for such advisory bodies was political. It was generally accepted that the massive postwar intake of immigrants could not be sustained without trade union support.128 This meant not only the government providing guarantees regarding full employment and the maintenance of existing wages and conditions, as we saw in the case of the DP scheme, but also assuring trade unions an input into the immigration planning process.

However, trade union representation on tripartite advisory bodies did not automatically mean that the interests of organised labour carried the day. The IPC’s membership included the President of the ACTU, Albert Monk, but also business figures from building, shipping, airlines, iron and steel and automotive components manufacturing. Albert Monk was also a member of the IAC, whose chair until 1950 was Labor backbencher Les Haylen. Representatives of the ACTU and the AWU, along with a former president of the ACTU, also sat on the IAC. In effect, for the first three years of its operation the IAC was dominated slightly by trade union representatives, while the IPC was dominated by business, leading to a degree of tension between the two bodies.129

This tension was most keenly seen in the debate over southern Italian immigration. John Storey, chair of the IPC and chairman of Australia’s leading automotive component manufacturer, Repco, pushed for the importation of southern Italian workers as he saw them as ‘deferential’ and less militant than labourers from the north of Italy.130 This tied in with the Department of Immigration’s own view that the immigration program could deliver benefits in labour productivity as many immigrants would be ‘generally used to harder work than Australians … will almost certainly be more docile than Australians … [and] are anxious at the moment to work excessive overtime and may attempt to do

Immigration confidentially informed officers that the practice of submitting contracts to Canberra for approval was to be discontinued and the Act was officially repealed in 1950: Layman (1992) 177; Statute Law Revision Act 1950 (Cth).

128 See, eg, Copland (1951).
130 Ibid 145
so in the face of union bans on overtime’. In contrast, the trade union movement used the IAC to reiterate opposition to southern Italian immigration, claiming the Italians were less educated and less assimilable than northern Europeans. Trade union opposition, expressed through the IAC, was partly based on the persistence of xenophobia that originated during earlier periods of Italian settlement (which, as we noted above, led to restrictions on European immigration between the wars), but was also partly a response to business interests favouring the importation of ‘docile’ labour. The conflict between the IPC and the IAC was resolved when the Minister, Harold Holt, reconstituted the IAC. Haylen was replaced as chair by Colonel Rupert Spry, head of the Australian Secret Intelligence Service (‘ASIO’) and feminist and socialist Jessie Street was sacked and replaced by a representative of the National Council of Women of Australia. In 1951 a migration agreement was signed with Italy and in the postwar period around 60 per cent of the Italian immigrant intake came from the southern provinces of Calabria and Sicily.

By 1952 it was revealed in parliament that the majority of southern Italian workers were ‘congregating in certain big industries, such as the motor and mining industry at Broken Hill’. The Vernon Report into the Australian Economy in 1965 also concluded ‘that certain large industries, such as clothing, motor vehicles, parts and repairs, iron and steel and machinery and engineering, have relied heavily on immigrant labour, and certain fast-growing industries, such as petroleum refining and plastic products, also employ a proportion of migrants well above average’. Patmore provides the following summary:

By 1966 migrants formed more than 30 per cent of the manufacturing workforce and were concentrated in the clothing industry (49.48 per cent of the industry workforce), the textile industry (44.7) and the petroleum industry (40.6). In the motor vehicle construction industry migrants formed more than 80 per cent of the workforce at some plants by the early 1970s. Migrant workers were also important in the building and construction industry, where non-British migrants made up more than half the non-casual labourers and almost one-third of the bricklayers, plasterers and construction operatives by 1971. Overseas-born employees constituted 26.8 per cent of the total Australian workforce by 1971.

The trend toward segmentation evident in these figures suggests that, in their role as representatives on tripartite bodies such as the IPC, major industrialists and employers had ready scope to use the immigration program to meet their industrial objectives. These industries suffered from continuing labour shortages both because of rapid postwar expansion and because these jobs — low paid, dirty, dangerous and subject to close discipline — tended to be deserted by local workers and so required continuous inputs of new arrivals. Lever-Tracy and Quinlan conclude that ‘the personnel and

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133 Committee of Economic Enquiry (1965), vol 1, 206.
industrial practices of BHP, ACI and various motor companies were built on expectations of high labour turnover’.\textsuperscript{136}

The strong dependence on newly arrived immigrants was a prominent feature of BHP’s employment experience throughout most of the postwar period and it may be characterised as an ‘entrepot employer’ ... BHP was not unduly concerned by moderate to high levels of labour turnover in some sections so long as replacements were readily available and the domestic labour market didn’t become so competitive that recent arrivals found employment too quickly ... [T]he most important response to labour shortages was simply to approach the Department of Labour for additional immigrant labour from ever-widening sources. It was not until late 1972 that a BHP request for immigrant labour was rejected outright ... In explaining its reliance upon immigrants BHP contended that Australian-born workers tended to shun steel industry jobs. A more accurate interpretation would suggest that many of the jobs and associated conditions the company offered were only acceptable to newly arrived migrants with little immediate prospect of employment elsewhere.\textsuperscript{137}

4.4 Skilled Recruitment in the Postwar Period

We have already drawn attention to the usefulness of the postwar ‘contract’ scheme in meeting the unskilled and semi-skilled labour needs of the immediate postwar economy, as well as noting the avowed intention of both Australian industry and the Immigration Department to recruit unskilled immigrant labour from southern Europe,\textsuperscript{138} and the subsequent segmentation of southern European immigrant labour. Yet it is worth noting the bifurcated nature of the government’s recruitment policy at this time, and the continued use of assisted passage given to skilled British migrants:

\textquoteleft[T]he two main schemes were complimentary. The pressing need for skilled workers in Australia was partly met by arrivals under the United Kingdom Assisted Passage Scheme; displaced persons, irrespective of their technical and professional skills, were allocated to unskilled employment, generally in areas remote from the capital cities.\textsuperscript{139}

Under the terms of the postwar assisted passage agreement with Britain, the Australian government exercised the right to select immigrants, although those with certain qualifications or those undertaking work of national importance had to apply to the British Ministry of Labour for permission to seek assisted passage. In seeking to assuage British fears of uncontrolled postwar emigration, Calwell insisted that because Australia’s labour needs covered a wide range of occupations, they would ‘readily

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\textsuperscript{136} Ibid 103.
\textsuperscript{137} Ibid 196-97. A similar response to high turnover in ‘dirty’ jobs in the automotive industry has been charted by Robert Tierney (1994) 22-24. Tierney suggests that the massive influx of immigrants was a factor in defeating a union claim for a uniform semi-skilled line margin by overcoming chronic labour shortages in unpopular production lines. Such shortages had, in the immediate postwar period, strengthened the union’s bargaining power: ibid 30-32. This ties in with Lever-Tracy and Quinlan’s suggestion that the mass migration program similarly depressed wage levels in the steel industry.
\textsuperscript{138} See, eg, Tierney (1998) 144.
\textsuperscript{139} Appleyard (1964) 48-9.
absorb a cross-section of British people without detriment to Britain’s economic structure. Australia agreed not to recruit British nurses, coalminers, apprentices and farm labourers, but the assisted migration scheme operated to give priority to the selection of young skilled workers.

As well as facing postwar labour shortfalls in skilled as well as semi-skilled and unskilled categories, Australia was also undergoing a profound postwar restructuring of its employment base and occupational structure, especially a rapid growth in the white collar fields of professional, technical and administrative groups. While British assisted passage schemes favoured recruitment of skilled workers, particularly in the field of community services (teachers, GPs, dentists, social workers, clergy, pharmacists, etc), recruitment of highly skilled scientists and technologists tended to be organised through other channels. In 1946, the Department of Labour and National Service (‘LNS’) and the newly established Commonwealth Employment Service (‘CES’) had advocated the recruitment of highly-skilled professional labour to meet shortfalls in domestic supply, in particular engineers, architects, draughtsmen, as well as chemists and dentists, and particularly in Victoria. Similarly, a Conference on Scientific Manpower in December of 1946 noted a sharp increase in the demand for scientifically qualified labour in both the government and the private sector. In response, LNS, together with CSIRO and the Departments of Industry and of Supply and Development established the Overseas Scientific and Technical Experts Scheme (‘OSTES’) to assist Australian firms to recruit British scientists and professionals. Between 1949 and 1952, around 145 German scientists and engineers were also recruited under the Employment of Scientific and technical Enemy Aliens (‘ESTEA’) scheme, approved by Cabinet in late 1946 and modeled on a similar British scheme for recruiting German personnel. An ESTEA selection committee, including representatives of the ACTU, the Chamber of Manufacturers, the Commonwealth Office of Education, screened requests for qualified personnel from industry and universities, while the Commonwealth employed many to work on rocket and weapons research. Although the scientists were required to register as aliens and were closely supervised at work, the ESTEA scheme remained shrouded in secrecy, a fact probably explained by the subsequent revelation that the intake included several members of the Nazi Party, the SS and suspected war criminals. In 1955-56, one third of CSIRO research officer recruits came from overseas, and by 1964 the Organisation had recruited two-thirds of its scientists from other countries. Employer recruitment campaigns operated outside of the assisted passage schemes and tended to offer fully paid fares rather than passage assistance.

140 Cited in Salter (1978) 34.  
141 See House of Commons debates, vol 495, c62, c144  
142 Appleyard (1964) 42.  
143 O’Dea (1968).  
144 Cahill (1994) 121.  
145 Ibid 124.  
146 Ibid 125.  
147 Homeyer (1994).  
149 Salter 76-77.  
150 In the face of such inducements it is clear, then, that the United Kingdom had even less control over the emigration of its highly-skilled workforce than that provided by assisted passage agreements. A 1963 Royal Society report coined the term ‘brain drain’ to describe the emigration of 17 per cent of the current university output of science PhDs: see Salter (1978) 39.
The Department of Immigration began targeting its UK assisted passage recruitment campaigns at professional workers from the late 1950s as it became clear that Australia’s professional manpower needs were still going unmet, due in part to shortfalls in domestic supply caused by a crisis in university finances.\(^{151}\) In 1963, a professional migrant sub-section was established within the Department of Immigration and the Higher Appointments Office of the Department of Labour and National Service put in place machinery to deal exclusively with the overseas professionally qualified worker. A larger proportion of assisted passages was allocated to the highly skilled, and an Adviser on Professions was appointed in London to promote emigration to Australia.\(^{152}\) By 1966, the search for highly skilled labour led the government to relax restrictions on non-European immigration, announcing that:

> applications for entry by well qualified people wishing to settle in Australia will be considered on the basis of their suitability as settlers, their ability to integrate readily, and their possession of qualifications which are in fact positively useful to Australia … The changes are of course not intended to meet general labour shortages or to permit the large scale admission of workers from Asia; but the widening of eligibility will help to fill some of Australia’s special needs.\(^{153}\)

Generally then, we can say that skilled immigration played a vital role vis-à-vis the professional labour market, particularly given the inability of domestic tertiary education to meet demand. In 1973, John Niland concluded:

> Lead times to achieve labour market harmony are longest where a country relies heavily on its own education system to provide labour supply. For Australia, the importation of skilled manpower has enabled adjustments more on a year to year basis than on the decade to decade basis characteristic of a closed system.\(^{154}\)

Five years later, Moira Salter came to a similar conclusion regarding the experience of the 1950s and 1960s:

> The role of immigration, hopefully conceived during a period of acute shortages of professional manpower, was that of a corrective device to reduce maladjustments between supply and demand in the labour market comparatively quickly.\(^{155}\)

The initial decision to source needed professional migrants from Britain and use the DP program to meet unskilled or semi-skilled bottlenecks was partly a pragmatic one. As Calwell explained in 1947:

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\(^{151}\) See Salter (1978) ch 4.

\(^{152}\) Ibid 55, 78.

\(^{153}\) Opperman (1966)

\(^{154}\) Niland (1973) 265.

\(^{155}\) Salter (1978) 79.
There was no value in taking out men who were highly skilled here, only for them to find out that they would not practise in Australia. The standards in Australian universities are high and we did not have reciprocal arrangements to recognise degrees with foreign countries.\textsuperscript{156}

Occupational regulation and recognition of qualifications were handled by professional bodies at the State level. Most of these were initially formed by practitioners educated in Britain and the associations were patterned on their British counterparts. They were, observes Salter, often branches of a United Kingdom body, or looked to affiliation with a United Kingdom body and a reciprocal arrangement for the automatic acceptance of each other’s members.\textsuperscript{157} Similarly, Australian State universities were closely modeled on their British counterparts. The implication for immigration of this dual orientation toward the United Kingdom was that those trained in the United Kingdom were able to enter automatically into the Australian professions.\textsuperscript{158}

The federal division of power meant that even if the Commonwealth wanted to use its power to recruit, assess and transport non-British professionals to meet skilled labour shortages in Australia, alterations to occupational regulation remained outside of its control. This was in spite of the fact that in its assisted migration agreements with the Netherlands (1951), Italy (1951) and the Federal Republic of Germany (1952), the Commonwealth government had taken on the responsibility to ‘render every assistance through the medium of the Commonwealth Employment Service in placing migrants in employment’.\textsuperscript{159} So although the CES, through its Higher Appointments Division, was able to monitor professional vacancies, assess future requirements and advise migration authorities, it found itself hampered by the range of complex State legislation regulating professional employment over which it had no control.\textsuperscript{160}

As the European immigration program proved successful and was expanded, it became increasingly difficult to limit selection to ‘hardy sons of toil’. Furthermore, although the use of the two year ‘contract’ had meant that the first cohort of European immigrants, regardless of qualifications, could be directed into semi-skilled and unskilled work, this only deferred the issue: over half of the DPs left their jobs at the expiry of their contract, which meant by 1952 there had been a major injection of skilled Europeans into the labour force with no adequate national system in place to assess and recognise their qualifications, with the exception, for various trades, of the \textit{Tradesmen’s Rights Regulation Act 1946} (Cth).

The \textit{Tradesmen’s Rights Regulation Act} was originally enacted as part of Australia’s postwar reconstruction policies. During the war, production for civilian needs had been pruned considerably in order to transfer manpower to both war production and the armed services. The large-scale employment of women in war industries also proceeded. The displaced and new labour entering war jobs often required special training and upgrading.\textsuperscript{161} Prior to the war, entry to most trades was through a formal

\textsuperscript{156} Cited in Moore (1994) 15.
\textsuperscript{157} Salter (1978) 7
\textsuperscript{158} \textit{Ibid} 10.
\textsuperscript{159} \textit{Ibid} 43.
\textsuperscript{160} Cahill (1994) 131, 138-9.
\textsuperscript{161} Walker (1947) 58-9.
apprenticeship system; beginning in 1940, the government negotiated a series of ‘dilution agreements’ with unions and employer associations, enabling fast-track training of labour outside the apprenticeship system to meet the new wartime manpower needs. The conditions in the agreements were embodied in National Security Regulations and were administered by the Minister for Labour and National Service.

Those who were employed to do tradesmen’s work under this scheme were called ‘added tradesmen’ and were paid at the appropriate skilled wage. Recognised tradesmen were to be given employment preference over added tradesmen, although added tradesmen were sometimes given explicit preference over women employees, and in the case of staff reductions, added tradesmen were to be laid-off before recognised tradesmen.

The preference system outlined in the dilution agreements meant that as skilled labour became increasingly available as demobilisation proceeded, employers were obliged not to continue the employment of added tradesmen or women. But although a large number of added tradesmen and women returned to previous occupations or left the workforce, after the war 24 000 remained in employment as tradesmen. The Tradesmen’s Rights Regulation Act was enacted in August 1946 to facilitate the entry of added tradesmen and ex-service personnel with appropriate or equivalent training and experience in trades, while protecting the employment and other industrial rights of recognised tradesmen. It did this by establishing Central and Local Trades Committees, tripartite committees that mirrored the administrative machinery that had been established under the dilution Regulations. These committees were able to recognise ex-servicemen with full trades skills. Initially, the Act covered only those trade groups covered by the Dilution Regulations: the engineering, electrical, boilermaking, sheetmetal and blacksmithing trades.

As an existing national legislation-based scheme for recognising the skills of those who had not completed a formal Australian apprenticeship, the Act became the default mechanism for recognising the overseas trade qualifications of newly arrived immigrants. However, by 1951 only 30 per cent of European electrical and metal tradesmen presenting themselves for assessment were gaining certification. This was due to many immigrants lacking documentation of their overseas qualifications and to the lack of knowledge, and suspicion, of foreign training methods and standards on the part of Australian assessors. In response, the government, in 1951-52, sent a

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162 For example, the first agreement in May 1940, covering the engineering trades, was signed by the Commonwealth Government, the Amalgamated Engineering Union, the Metal Trades Employers Association, the Victorian Chamber of Manufactures and the South Australian Chamber of Manufacturers Incorporated.

163 Ibid 306-7; for examples of various National Security Regulations and the first dilution agreement see Foenander (1943), appendices I-IX. Walker (1947) observes, at 45, that these manpower policy initiatives all ‘involved the overriding of arbitration awards and the modification of trade union principles, and reflected Labour’s [sic] growing support of the war effort’. As we have also seen, wartime imperatives also enabled the Commonwealth to take control of general manpower planning through a central directorate, replacing the existing state-based system of labour exchanges, paving the way for a postwar Commonwealth Employment Service.

164 Fry Committee (1983) vol 2, 22.

165 Ibid 22.

166 Ibid 23.
representative mission to Europe to report on vocational education and training practices in the metal and electrical trades in Italy, Germany and the Netherlands. The Act was amended in 1952 to grant recognition as a tradesman to any person qualified as a tradesman ‘in a country other than Australia by training and employment in accordance with the laws and customs of that country’ provided that ‘his training and employment was such as to provide the skill necessary for the performance in Australia of work ordinarily performed by a recognised tradesman’. The assessment was made by Local Trades Committees comparing an applicant’s qualifications and experience with information gained from overseas missions or by trade testing or by on-th-job assessment. The 1951-52 mission, for example, was able to specify qualification and experience criteria for applicants from Germany and the Netherlands, given a uniform standard of apprenticeship training in those countries; in the case of Italy, no general criteria could be specified, so the main means of determining whether training amounted to sufficient skill was through individual assessment of the applicant.\(^{167}\)

As legislation designed to deal with postwar reconstruction and demobilisation, the Act was only intended to last until 1952. However, the massive postwar immigration program gave it a more general function and saw its life indefinitely extended, and its scope was increased to include over 70 trades. Between 1946 and 1983, 150,000 tradesmen’s certificates were issued, with over 100,000 of these issued to immigrants, the remainder to ex-servicemen who had obtained training in the services and Australian civilians who gained skills through informal upgrading.\(^{168}\) Since the initial overseas mission in 1951-52, seven further tripartite missions have studied training in overseas countries, enabling the Central Trades Committee to develop criteria for assessing trade standards in 43 countries. The initial restrictive labour market protection character of the 1946 Act — an outcome of strong craft unionism in Australia — receded as the anticipated postwar unemployment did not eventuate and the high demand for labour led to some relaxation of entry requirements.

As indicated earlier, because of the federal division of powers and the position of the professional organisations, the recognition of overseas professional qualifications, in contrast to trade qualifications, represented a far more intractable problem. The issue was raised at almost all the Citizenship Conventions that the government organised on an annual basis throughout the 1950s to promote, and encourage acceptance of, the immigration program. Responding to these concerns, the Commonwealth government in the early 1950s advocated the individual examination of qualifications that were not immediately acceptable to professional registration bodies and pressed for the revision of State legislation along these lines.\(^{169}\) However, the problem was made more complex by the lack of uniformity in the way State bodies dealt with recognition. In each registrable profession, there were six State and two Commonwealth boards. Some professional registration boards administered State legislation that specified acceptable overseas qualifications by name. Of these, some, but not others, had discretion to extend recognition to qualifications which had not been specified and to amend legislation so as to authorise examinations to assess applicants. Furthermore, registration in one State was not automatically transferable to another,\(^{170}\) and professions in some States or

\(^{167}\) Salter (1978) 44.
\(^{168}\) Fry Committee (1983) vol 2, 24.
\(^{169}\) Commonwealth Parliamentary Debates, Senate, 8 November 1950, 2025.
Territories required that reciprocal recognition of qualifications should exist with a country in which the overseas qualification was acquired.

This meant progress was slow: in 1953 Calwell admitted that only ‘slight’ progress had been made; Holt reported to the 1956 Convention that the Commonwealth government had achieved a ‘number of modifications’. Generally, Commonwealth pressure during the 1950s was successful in getting many professional bodies to devise procedures whereby European-trained professionals could be assessed and gain admission to their profession in Australia. Further, there were a number of ‘non-registrable’ professions, such as engineering, which merely required certain academic qualifications as a condition of membership, and the Commonwealth proved successful in getting these professional associations to assess the qualifications of immigrants. However, the procedures of the registrable professions generally involved dealing with immigrants on an individual basis. Professional associations did not collaborate nationally to agree on whether overseas institutions met their standards.

By the 1960s, the restrictive policies of professional registration boards were recognised as limiting Australia’s ability to attract overseas professionals. In an attempt to overcome the fragmented nature of professional regulation, the government established the Committee on Overseas Professional Qualifications (‘COPQ’) in 1969. The COPQ, a unit within the Department of Immigration, was in someway intended to be the professional equivalent of the skilled trades missions that operated in the context of the Tradesmen’s Rights Regulation Act by being an authoritative source of information on the standing of overseas professional qualifications for professional associations and other inquirers. The COPQ’s Expert Panels, consisting of academics and practitioners, also wrote booklets on Australian professions as a source of information for prospective immigrants. Part of the rationale behind the new approach was that most prospective immigrants would be able to receive assessment of their qualification while overseas. However, as the number of immigrant source countries expanded, the COPQ progressively shifted its focus to individual assessment rather than information provision in an attempt to deal with the widening range of qualifications. Examinations in selected professions were devised by Expert Panels and Advisory Councils, and were meant to provide overseas trained practitioners with the opportunity to demonstrate their level of competence. In the absence of Commonwealth powers to legislate over the professions, the shortcomings of the COPQ remained apparent.

COPQ, by its reliance on free of fee assessments by the professional associations, it having no legal power to control and only limited power of persuasion, was placed in almost a client relationship with those bodies.

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174 Salter (1978) 50. In contrast to the COPQ, the trades qualifications recognition system operated as a unit of the Department of Labour and National Service.
5. The 1970s: A Decade of Transition

When Labor was returned to power federally in 1972 after 23 years of conservative rule, it inherited a legislative and administrative framework for immigration basically unchanged from that put in place by the postwar Labor government. The short-term flexibility of the system was facilitated by a regulatory regime which granted broad discretions to immigration officers, while control over immigration policy — not enunciated in any legislation — remained with Cabinet, the Minister and the department responsible for immigration.

The Immigration Act had been replaced in 1958 with the Migration Act 1958 (Cth). The dictation test was abolished by the new enactment, and instead officers were empowered to grant temporary or permanent entry permits to immigrants, and the minister was empowered to cancel temporary permits in his absolute discretion, rendering the subject immigrant liable to deportation as a prohibited immigrant. The change from the dictation test method of preventing to a system of entry permits was one of form rather than substance. As we saw earlier, the dictation test had diminished as a form of restrictive control with the introduction of the landing permit system in 1932. The effects of the procedures under the Immigration Act 1901 and those established by the Migration Act 1958, were, ‘for practical purposes, identical; both the old [exemption] certificate and the new permits are issued at the Minister’s discretion; both may be cancelled at the Minister’s discretion; and the effect of cancellation in both cases is that the holder becomes a prohibited immigrant’.

The new government instituted a racially non-discriminatory immigration policy and, in 1973, announced its intention to improve the immigrant selection process. Although postwar governments had from time to time enunciated policies as to the preferred composition of the immigrant intake, the final assessment of any individual immigrant’s suitability had been left to the discretion of officers in the field. Dissatisfaction with this system had already surfaced in the late 1960s, with concern that the high rate of settler departure from Australia and other migrant settlement problems reflected a failure to select the most suitable migrants for permanent settlement. In terms of more rigorous selection processes, the dominant model at the time was Canada’s points system, established in 1967, which gave numerical weighting to the different factors required for successful settlement so that they could be added up to obtain a ‘pass’ or ‘fail’ mark. In early 1973 an Australian adaptation of the Canadian model was introduced, called the Structured Selection Assessment System (‘SSAS’). This attempted to enumerate the characteristics — economic and social — required of immigrants to make for successful settlement. While this codified the interview process, giving immigration officers a detailed two-part ‘interview report’ to be completed, it did not numerically weight the factors and so the officer still had to make a subjective assessment of immigrants’ personal and social factors (attitudes to migration, initiative, self-reliance, family unity and so on), using a scale ranging from ‘very good’ to ‘not favourable’.

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177 Migration Act 1958 (Cth) ss 6, 7.
178 Palfreeman (1964) 109.
In 1979, a Numerically-Weighted Multi-Factor Assessment System (‘NUMAS’) was introduced which added numerical weightings, to a total of 100 points, to the two-part assessment form of the SSAS. Different ‘pass marks’ were set for different categories of migrant applicant. Independent breadwinner applicants were required to attain at least 30 points on both sets of factors (economic and social/personal), while relatives of Australian residents entering under family reunion did not need a minimum number of points under the economic factors but required at least 25 points on personal factors. Spouses, dependent children and aged parents of residents, however, were not required to reach minimum points for either category of factors. The economic factors placed a major emphasis on skills, but the points test as a whole was evenly split between such economic factors and a range of personal and settlement factors. This stands in contrast to the Canadian points system, which concentrated on economic factors and only allotted a maximum of ten points for ‘personal suitability’, judged according to resourcefulness, motivation, adaptibility and so on.

These attempts to structure the exercise of discretion in immigrant selection were given impetus during the 1970s by changes in the legal environment surrounding administrative decision making. The Administrative Decisions (Judicial Review) Act 1977 (Cth) codified the grounds for review of administrative decisions, simplified access to judicial review and enabled the newly-established Federal Court to set aside departmental decisions where there was a procedural flaw in the decision-making process. The Act also enabled applicants to require decision makers to produce a Statement of Reasons explaining their decisions. The new legal environment made judicial review of immigration decisions increasingly commonplace. This led to a ‘control contest’ between the judiciary and the executive as it became clear that, in the context of the new administrative law, a policy-based rather than a rule-based regime invited judicial intervention. Judicial scrutiny in turn revealed the arbitrary or casual nature of departmental procedures. In 1977 a Joint Management Review of the Department’s functions was established, chaired by an external consultant. Reporting in 1978, the Review criticised the ‘excessive discretionary features of the Migration Act 1958’.

The 1970s also saw the end of the postwar boom and the re-emergence of high unemployment, particularly affecting those blue-collar industries that had traditionally served as the employers of postwar immigrant workers. Yet even before the emergence of unemployment, the Labor government had indicated a philosophical shift in the regulation of the labour market. As well as discarding the white Australia policy, the Whitlam government also moved to dismantle those other pillars of the Federation settlement, reducing tariff protection and exploring social insurance or contribution-based schemes of accident compensation and retirement provision. With regard to manpower planning, the Labor government was committed to the ‘Swedish model’ of

180 Ibid 142-3.
181 Ibid 143.
183 Cronin (1993) 97; by the late 1980s, Migration Act decisions constituted the largest single caseload in the Federal Court, mainly applications for residence on compassionate or humanitarian grounds.
using labour market programs and increased domestic training rather than immigration, unemployment or relative wage changes to allocate labour supplies.\textsuperscript{185}

This shift reflected diminishing expectations regarding the labour market role for immigration generally. As the Committee of Inquiry into Labour Market Training put it in 1974:

\begin{quote}
[I]t is unlikely that the increasing demands of Australian industry for skilled labour can be met solely through an increased flow of migrant skilled workers. In any event, the Committee believes migration is a second best solution to providing Australians with the skills necessary to work in higher level occupations and, in the process, avoid the inflationary pressures that may arise from immigration.
\end{quote}

In the Committee’s view there are within Australia reserves of labour that, given an adequate training system, can be used to alleviate present and future labour shortages. A labour market training scheme which adequately caters for women, for the underemployed, and for those in need of retraining should be able to provide a much needed additional supply of trained workers.\textsuperscript{186}

Accordingly, three years of Labor in power saw substantial reductions in immigrant intake, from 140 000 to 50 000, representing a break with the post-War shibboleth concerning the virtues of a steadily increasing population.

Although 1973/74 was characterised by growing unemployment, high by postwar standards and exceeding what was then considered the ‘full employment’ benchmark, it was also characterised by an increase in unfilled vacancies. This shift in the relationship between unfilled vacancies and the unemployment rate seemed most pronounced in the skilled manual and semi-skilled occupational categories — those worker groups where the immigration program reductions were most pronounced.\textsuperscript{187} Tight labour markets (judged by vacancy rates) were experienced ‘particularly in Sydney, Melbourne, the BHP fiefdoms and other areas of migrant concentration’ at the same time that the product market was not particularly buoyant.\textsuperscript{188} This seems to suggest that the reduction in migration intake interfered with the established recruitment activity of many of the larger industrial companies. Similarly, the geographic and occupational mobility associated with the high-turnover of migrant labour would be expected to go a long way to keeping labour mismatch at bay as long as the migration program was maintained at high levels.\textsuperscript{189} This was a point recognised by the OECD which concluded that the continuous inflow of immigrants ‘has given to the [Australian] workforce an unusual degree of occupational and regional mobility’\textsuperscript{190}.

\textsuperscript{185} See Chapman (1985); Australian Interdepartmental Mission to Study Overseas Manpower and Industry Policies and Programmes (1974); Committee of Inquiry into Labour Market Training (1974).

\textsuperscript{186} Committee of Inquiry into Labour Market Training (1974) 9.

\textsuperscript{187} Bentley and Blandy (1974-75) 15-17.

\textsuperscript{188} Hughes (1974-75) 72.

\textsuperscript{189} Ibid 63-64.

\textsuperscript{190} Economic Survey Australia 1972, cited in Gruen (1976) 22.
The National Population Inquiry of 1975, echoing concerns of the 1940s, reiterated concerns with net replacement rates and prospective labour shortages. The 1977 Green Paper prepared by the Fraser government spoke more broadly of Australia’s obligations — both social and humanitarian — to maintain family reunion schemes and refugee intakes, while labour market needs could be met through the recruitment of skilled and professional migrants. In response to the Green Paper the government established a range of categories of people eligible for migration to Australia, consisting basically of a family reunion category, a general eligibility category; and a refugee category. This range of broad categories remains essentially unchanged. Together with the move away from relatively unfettered discretion, and the loss of faith in immigration as the main — if not the sole — tool of labour market adjustment, it suggests that the 1970s had served to establish the basic structure and concerns that characterise Australia’s immigration program today.

6. Conclusion

Our survey suggests that from the earliest days of European settlement there has been a close link between immigration and labour market policy in Australian economic and social planning. This link has two strands, exhibiting separate concerns: to protect domestic employment and working conditions, and to facilitate and promote the development of an Australian labour force according to assessed national needs. One major theme to emerge is the implicit or explicit conflict between these two strands. Explicit labour market concerns are also bound up with questions of race. Yet race is hardly mentioned in any of the legislative instruments since 1901. One reason for this is that the legislation has been largely silent on actual policy concerns and has left a large field of discretion to administrators. This also reveals the importance of focussing our inquiry not only on immigration restriction as a form of regulation, but also immigration promotion.

In terms of promotion, Australia’s main instrument for much of the twentieth century was passage assistance: between 1900 and 1930, six out of ten immigrants were assisted. Further inducement for Europeans to migrate came through maintaining a high demand for labour through public investment and the tariff as ‘job creation’ measures. A focus on immigration ‘law’ seen as legally conferred rights and procedural norms will tend to focus on the restrictive aspect of immigration policy which, we have seen, was generally constructed around race although, in the context of s 3(g) of the Immigration Restriction Act and the Contracts Immigrants Act, non-race based labour market concerns also played an explicit role. To a large extent, restrictive laws were second-order measures, essentially reactive, in the context of an overarching, ongoing, pro-active ‘assistance’ policy as a response to labour shortage. Yet even where explicitly exclusionary or restrictive laws were put in place in reaction to calls from vested interests or to economic recession, they may not have been the dominant mode of regulation: our survey of measures undertaken between the wars indicates that bilateral agreements between Australia and labour exporting countries were as important in restricting immigrant flows as the imposition of quotas and landing permits, and the dictation test in particular was rarely used as a response to fluctuating demand.

Post-World War II, during the ‘long boom’, labour shortage remained the dominant policy context, and bilateral assistance agreements with labour exporting countries remained the dominant policy instrument. Without assistance, migration flows would have remained at a low and relatively constant level. Passage assistance was used to meet annual intake targets which were in turn determined through labour market intelligence assessed by tripartite bodies. One interesting instrument used during this period was the undertaking used in the Displaced Persons Scheme. Passage assistance on its own had been used for labour market objectives, as the pre-war experience showed, but without power over the disposition of labour it was a somewhat blunt instrument. The use of the ‘contract’ to control disposition of DP immigrants served two immediate purposes: it explicitly protected the employment levels and wages and conditions of domestic labour, and it aided specific industrial strategies by directing labour to certain projects. After the demise of the ‘contract’, the existence of business representation on tripartite boards served to ‘direct’ or channel labour into core production activities, again aiding a more specific industrial strategy than the relatively undirected ‘nation-building’ immigration program that prevailed before the war.

We have identified the 1970s as a decade of transition in immigration law and policy for two reasons. First, during that decade and in contrast to much of the postwar period, it became increasingly difficult for unskilled immigrant workers to enter Australia, except under family reunion provisions or under Australia’s humanitarian obligations to refugees; explicit worker recruitment was redirected toward skilled labour. Secondly, there were moves toward an increasing codification of selection procedures. To some extent the two developments were independent: the shift in worker recruitment toward skilled labour was precipitated by economic restructuring that saw the emergence of high and persistent unemployment and a decline in those blue-collar industries that had served as the labour market destination for much of the postwar immigrant intake. The shift to a less discretionary selection system was precipitated by developments in the field of administrative law. However, the two developments were inter-related in that the new systems of selecting immigrants have given governments the potential to more closely regulate the composition of the immigrant intake with regard to labour market factors of skill and employability. The past two decades have continued the pattern established in the 1970s: compared with earlier periods, immigration regulation in the 1980s and 1990s has been notable for its less discretionary, highly particularised and densely regulated form, based on clearly articulated economic rationales and tightly-planned annual intakes.

192 National Population Inquiry (1975) 120.
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